



## **NEW JERSEY LAW REVISION COMMISSION**

### **Draft Final Report Regarding Meaning of “Widow” for Exemption from Taxes**

**December 09, 2019**

The work of the New Jersey Law Revision Commission is only a recommendation until enacted.

Please consult the New Jersey statutes in order to determine the law of the State.

Please send comments concerning this Report or direct any related inquiries, to:

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## Background

This Report concerns the meaning of the term “widow” in N.J.S. 54:4–3.30 which provides a property tax exemption to certain widows of deceased veterans. The issue concerns what is the effect of remarriage on the status of a surviving spouse of a disabled veteran.

The Exemption Statute of 1948 provided for a total property tax exemption for veterans who were declared permanently disabled as a result of their military service. This exemption was subsequently extended to a deceased veteran’s widow<sup>1</sup> in certain circumstances. Currently, the statute’s definition of widow does not address whether a veteran’s widow who remarries and is later widowed again is considered a widow under the statute, or whether widowhood ceases permanently upon a remarriage.

## Analysis

Article VIII, § 1, ¶ 3 of the 1947 New Jersey Constitution states that:

The widow of any citizen and resident of this State who has met or shall meet his death on active duty in time of war in any such service shall be entitled, during her widowhood, to the exemption in this paragraph provided for honorably discharged veterans and to such further exemption as from time to time may be provided by law.

This provision makes no reference to remarriage. In 1948, the response to this constitutional paragraph was the Legislature’s enactment of N.J.S. 54:4–3.30 (“Exemption Statute”). The Exemption Statute provided for a total exemption from property tax for those veterans whom the VA declared 100% permanently disabled as a result of their military service. In section (b), the statute extended the exemption to a veteran’s widow. Under the terms of this exemption, the veteran had to have been both entitled to and have actually received the exemption on a jointly owned residence at the time of death.<sup>2</sup> The relevant portion of the current statute is:

The surviving spouse of any citizen and resident of this State who was honorably discharged and, after the citizen and resident's death, is declared to have suffered a service-connected disability as provided in subsection a. of this section, shall be entitled, on proper claim made therefor, to the same exemption the deceased

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<sup>1</sup> The term “widow” refers to both a widow and widower, and the term “widowhood” refers to both widowhood and widowerhood.

<sup>2</sup> *Id.* at 210.

would have become eligible for. The exemption shall continue during the surviving spouse's widowhood or widowerhood, as the case may be, and while a resident of this State, for the time that the surviving spouse is the legal owner thereof and actually occupies the dwelling house or any other dwelling house thereafter acquired.

The Exemption Statute, however, does not define “widow” or “widowhood,” nor does it mention remarriage. In *Pruent-Stevens v. Twp. of Toms River*<sup>3</sup>, the Tax Court addressed the definition of “widow” in the context of N.J.S. 54:4–3.30. with respect to the veterans’ exemption, considering whether Plaintiff’s marriage to Mr. Stevens in 1993 permanently extinguished her “widowhood,” from her first husband thereby making her ineligible for the exemption even after the termination of the second marriage.<sup>4</sup>

The Court held that a woman who remarries always remains the widow of her husband.”<sup>5</sup> Although the benefit terminates upon remarriage, the woman is still a widow and the benefit is re-established on the termination of the second marriage.

The Commission examined the law of other states to see whether there is a pattern as to whether remarriage extinguishes a property tax exemption or whether it only suspends it during the remarriage. While most states have some kind of tax reduction for disabled veterans, some do not, and in some the program varies from county to county. And in some states, the surviving spouse does not succeed to the exemption.

There is substantial variety in the states, like New Jersey, that allow a surviving spouse to have a property tax exemption. At one extreme is Louisiana where the surviving spouse’s right is not affected by remarriage. At least in Arkansas, California, Idaho, Massachusetts, Michigan, Montana, New Hampshire, North Dakota, Pennsylvania, Rhode Island, Vermont, and Wisconsin a surviving spouse seems to regain the exemption on the termination of the subsequent marriage. At least in Kansas, Nebraska, North Carolina, Oregon, Tennessee, Texas and Washington remarriage extinguishes the exemption. The differences in the effect of remarriage often turns on a choice of a phrase in a statute. The phrase, “is remarried” produces one result, the phrase, “has remarried” the other. It is not possible to know whether the choice of phrase was intended to have the effect it has caused. The Commission determined that examination of the law of other states did not provide a predominant national rule that could offer guidance in New Jersey.

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<sup>3</sup> *Pruent-Stevens v. Twp. of Toms River*, 30 N.J. Tax 200 (2017).

<sup>4</sup> *Id.* at 211-13.

<sup>5</sup> *Id.* at 217.

## Subsequent History

On December 5, 2018, the Appellate Division of the Superior Court of New Jersey heard the appeal in the matter of *Pruent-Stevens v. Township of Toms River*.<sup>6</sup> That case addressed a widow's eligibility for the veteran's property tax exemption under N.J.S.A. 54:4-3.30. In reversing the decision of the Tax Court, the Appellate Division held that once a widow, or widower, remarries, that individual permanently loses his or her eligibility for the disabled veteran's property tax exemption.<sup>7</sup>

Staff spoke with attorney for Mrs. Pruent-Stevens, who advised that the New Jersey Supreme Court denied certification in this matter on July 17, 2019.

## Conclusion

At its July 18, 2019, meeting, the Commission agreed that the Appellate Division reached the correct decision concerning the application of the exemption, and concluded its work in this area without issuing a formal recommendation to the Legislature.

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<sup>6</sup> *Pruent-Stevens v. Toms River Twp.*, 458 N.J. Super. 501 (App. Div. 2019).

<sup>7</sup> *Id.* at 514.